

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

**THE WASHINGTON UNIVERSITY
EMPLOYER**

and

Case 14-RC-206299

**SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1
PETITIONER**

MOTION TO RESCHEDULE HEARING ON CHALLENGED BALLOTS

Pursuant to Section 102.69(c)(1)(ii) of the National Labor Relations Board's Rules and Regulations, Washington University requests that the Hearing on Challenged Ballots scheduled in the above-captioned matter be rescheduled and, in support thereof, states as follows:

1. The Regional Director issued a Notice of Hearing on November 7, 2017 scheduling the Hearing on Challenged Ballots in the above-captioned matter for Thursday, November 16, 2017.
2. For the reasons discussed below, the University respectfully requests a rescheduled hearing date of November 30, 2017. The Union does not oppose rescheduling the hearing for that date.
3. In order to verify the status of challenged voters, the hearing will necessarily require the parties to introduce and provide testimony concerning educational records that are likely covered by the Family Educational Rights and Privacy Act ("FERPA").

4. In addition, the Regional Director has scheduled a conference for November 14, 2017 with counsel for the parties to discuss the bases for the challenges and attempt to resolve as many of the challenges as possible without the need for a hearing.

5. Until that conference, the University will not know what the specific bases are for the Union's challenges. Until that is known, the University cannot determine what additional educational records or other information may be necessary to address those challenges at a hearing. And until that has been determined, the University cannot evaluate what steps may be necessary to ensure compliance with FERPA with respect to those records.

6. For example, before certain educational records can be produced, it may be necessary to provide students with as many as 14 days of prior notice in order to comply with FERPA. *See* 20 U.S.C. § 1232g; 34 C.F.R. § 99.31(a)(9)(ii); *Browning v. Univ. of Findlay Bd. of Trustees*, 2016 WL 4079128, at *1 (N.D. Ohio July 30, 2016).

7. Both the majority and dissenting opinions in *Columbia University*, 364 NLRB No. 90 (2016), acknowledged the conflict between the NLRA and FERPA and the necessity of applying the former to ensure compliance with the latter. *See, e.g., id.* at 13 n. 93 (acknowledging that NLRA “conceivably could require a disclosure that the Family Educational Rights and Privacy Act (FERPA) might otherwise prohibit” and directing that “[a]ny such conflict can and should be addressed in the particular factual setting in which it arises”) (majority opinion); *id.* at 27 & n. 29 (“[I]t is already clear that current Board law, if applied to university student assistants, may contradict federal education requirements. For example, FERPA broadly restricts the disclosure of educational records, including student disciplinary records.”) (dissenting opinion).

8. Rescheduling the hearing will not cause delay or prejudice to any party to this case, nor will it impede the Region's consideration of these matters. Rescheduling will also be

consistent with the rationale of the current Representation Case Rules to resolve such issues after employees have voted, when resolution in due time will not affect employee free choice.

Representation—Case Procedures, 79 FR 74380-82.

Respectfully submitted this 9th day of November, 2017.

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

s/ John P. Hasman

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2017 I filed the foregoing MOTION TO RESCHEDULE HEARING ON CHALLENGED BALLOTS via the National Labor Relations Board's E-File system and served the same via email to the following counsel of record:

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